

Jeff D. Friedman (SBN 173886)  
HAGENS BERMAN SOBOL SHAPIRO LLP  
715 Hearst Avenue, Suite 202  
Berkeley, CA 94710  
Telephone: (510) 725-3000  
Facsimile: (510) 725-3001  
jefff@hbsslaw.com

Steve W. Berman  
(*Pro Hac Vice* Application to be filed)  
Mark S. Carlson  
(*Pro Hac Vice* Application to be filed)  
HAGENS BERMAN SOBOL SHAPIRO LLP  
1918 Eighth Avenue, Suite 3300  
Seattle, WA 98101  
Telephone: (206) 623-7292  
Facsimile: (206) 623-0594  
steve@hbsslaw.com  
markc@hbsslaw.com

*Attorneys for Plaintiff and Counterclaim*  
Defendant THOUGHT, INC.

James G. Gilliland, Jr. (SBN 107988)  
jgilliland@kilpatricktownsend.com  
Mehrnaz Boroumand Smith (SBN 197271)  
mboroumand@kilpatricktownsend.com  
Steven D. Moore (*pro hac vice*)  
smoore@kilpatricktownsend.com  
KILPATRICK TOWNSEND &  
STOCKTON LLP  
Eighth Floor, Two Embarcadero Center  
San Francisco, CA 94111  
Telephone: (415) 576-0200  
Facsimile: (415) 576-0300

*Attorneys for Defendants and*  
*Counterclaim Plaintiffs*  
ORACLE CORPORATION, ORACLE  
AMERICA, INC. and ORACLE  
INTERNATIONAL CORPORATION

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

THOUGHT, INC., a California corporation,  
Plaintiff,

v.

ORACLE CORPORATION, a Delaware  
corporation; ORACLE AMERICA, INC., a  
Delaware corporation; and ORACLE  
INTERNATIONAL CORPORATION, a  
California corporation

Defendants.

No. 3:12-05601 JSW

**~~PROPOSED~~ STIPULATION AND  
ORDER REGARDING E-DISCOVERY**

**STIPULATION REGARDING E-DISCOVERY**

The above-captioned Parties stipulate as follows:

1. This order supplements all other discovery rules and orders. It streamlines Electronically Stored Information (“ESI”) production to promote a “just, speedy, and inexpensive determination” of this action, as required by Federal Rule of Civil Procedure 1.

2. This order may be modified in the Court’s discretion or by agreement of the parties. If the parties cannot resolve their disagreements regarding any modifications, the parties shall submit their competing proposals and a summary of their dispute to the Court.

3. A party’s nonresponsive or dilatory discovery tactics will be considered in cost shifting determinations, if any. A party’s meaningful compliance with this order and efforts to promote efficiency and reduce costs will be considered in cost-shifting determinations, if any. Both parties reserve the right to seek cost shifting under appropriate circumstances.

4. Absent a showing of good cause, general ESI production requests under Federal Rules of Civil Procedure 34 and 45, or compliance with a mandatory disclosure requirement of this Court, shall not include metadata except as indicated in Paragraph 5.I.

5. Absent agreement of the parties or further order of this Court, the following parameters shall apply to ESI production:

A. **Definitions and Scope.** The following protocol and definitions shall control the production of discoverable documents and electronically stored information when production commences. The following terms shall be defined:

(1) **“Document(s)”** means ESI existing in any medium from which information can be obtained or translated into reasonably usable form and shall have the same meaning as used in the Federal Rules of Civil Procedure and case law construing same.

(2) **“Native File(s)”** or **“Native Format”** means the file defined by the creating application for the ESI, e.g., the file in which the ESI is normally created, viewed and/or modified.

(3) **“Metadata”** means: (i) information embedded in a Native File that is not ordinarily viewable or printable from the application that generated, edited, or modified such

Native File; and (ii) information generated automatically by the operation of a computer or other information technology system when a Native File is created, modified, transmitted, deleted or otherwise manipulated by a user of such system.

(4) **“Static Image(s)”** means a representation of ESI produced by converting a Native File into a standard image format capable of being viewed and printed on standard computer systems. A Tagged Image File Format (TIFF) image is an example of a Static Image.

(5) **“Load/Unitization file”** means an electronic file containing information identifying a set of paper-scanned images or processed ESI and indicating where individual pages or files belong together as Documents, including attachments, and where each document begins and ends. A Load/Unitization file will also contain data relevant to the individual Documents, including extracted and user created Metadata, coded data, as well as OCR or Extracted Text.

(6) **“OCR”** means the optical character recognition file that is created by software used in conjunction with a scanner that is capable of reading text-based documents and making such documents searchable using appropriate software.

(7) **“Extracted Text”** means the text extracted from a Native File and includes all header, footer and document body information.

(8) **“Receiving Party”** shall mean the party receiving production of Documents in response to any request for production of document(s) pursuant to Fed. R. Civ. P. 34(a) or pursuant to initial production of documents identified in the party’s Rule 26(a) disclosures.

(9) **“Producing Party”** shall mean the party producing Documents in response to any request for production of documents pursuant to Fed. R. Civ. P. 34(a) or pursuant to initial production of documents identified in the party’s Rule 26(a) disclosures.

**B. General Format of Production.** Subject to the provisions of paragraph 5.C., Documents that are produced in these proceedings, whether originally stored in paper or electronic form, shall be produced in electronic image form in the manner as described below. Notwithstanding the foregoing provisions of this paragraph, the Parties reserve the right to request

that an alternative format or method of production be used for Documents that are not susceptible to production in the format or methods of production addressed herein. In that event, the Receiving Party and the Producing Party will meet and confer to discuss alternative production requirements, concerns, formats, or methods.

C. **Production Format.** Documents shall be produced according to the following formats:

(1) **Electronic Production of Paper Documents.** Documents that are maintained in paper format shall be scanned as black and white images at 300 x 300 d.p.i. or greater resolution, in a Group 4 compression single-page Tagged Image File Format (“TIFF” or “.tiff format”) reflecting source attachment information and reflecting the full and complete information contained in the original Document. Documents shall also be produced with the associated OCR in accordance with Paragraph 5.C.(3). No Producing Party shall be required to ensure that the OCR is an exact duplicate of the contents of the TIFF image; and the Receiving Party shall accept the OCR in its “as is” condition.

(2) **Electronically Stored Information.** Except as provided in Paragraph 5.C.(5) below, Document images shall be generated from electronic Documents in a Group 4 compression single-page black and white “TIFF” image that reflects the full and complete information contained on the original document, together with a load file or functional equivalent specified in Paragraph 5.C.(3) that contains (or is produced with a corresponding text file that contains) the metadata as set forth in Paragraph 5.I. and extracted text. In the event a Document is redacted, the Producing Party shall withhold the redacted text for that Document. The failure to withhold such text for a redacted document by a Producing Party shall not be deemed a waiver of the privilege associated with that Document.

(3) **Load/Unitization File Structure.** The Producing Party shall produce a unitization file (“load file”) for all produced Documents in accordance with the following formatting, including for native Documents (in the same or a separate load file):

**OCR and Extracted Text Files (.TXT Files):**

- Single text file per document containing all the document’s pages

- Pages separated by form feed character (decimal 12, hex 0xC)

- Filenames should be of the form:

<Bates num>.txt

Where <Bates num> is the BATES number of the first page in the document.

- Text must be encoded in UTF-8 or ANSI

#### **Images Files:**

- Single page per image and single image per file;
- TIFF is the default FORMAT unless the following formats are agreed to: jpeg, jpeg2000, giff, png, single image tiff, and bmp
- Filenames should be of the form:

<Bates num>.<ext>

Where <Bates num> is the BATES number of the page, and <ext> is the appropriate extension for the image format (.jpg, .tif, .png, etc)

#### **Index Files:**

- Comma Separated Value (.CSV) files or Concordance .DAT files
- First line must contain the column/field names (set forth in paragraph 5.I. herein)
- Every row must have the same number of columns/fields (empty values are acceptable)
- Text must be encoded in UTF-8 or ANSI.
- Values must be enclosed by decimal 17, hex 0x11 (ascii device control 1) or an equivalent
- Values must be separated by decimal 19, hex 0x13 (ascii device control 3) or standard .DAT delimiters; to avoid errors, the parties agree to use, where available, default Concordance delimiters: ¶ and

**p**

**Native Index Files (if separate):**

- .CSV files or Concordance .DAT files
- All lines contain data – first row must NOT contain column headers.
- Every row must have 2 columns/fields (empty values are NOT acceptable)
- First column/field must contain the BATES number for the document
- Second column/field must contain the filename (NOT the full path) of the native file. Filenames must be unique in the production – unless the content is identical (for example, a native and an OCR text file may both be named XYZ01234567.TXT if they are identical).
- Text must be encoded in UTF-8 or ANSI.
- Values must be enclosed by double quotes (ascii character 34)
- Values must be separated by a comma (ascii character 44)

(4) **Resolution of Production Issues.** Documents that cannot be read because of imaging or formatting problems shall be identified by the Receiving Party. The Producing Party and the Receiving Party shall meet and confer to attempt to resolve problem(s), to the extent the problem(s) are within the Parties' control.

(5) **Native Format Documents.** Notwithstanding the foregoing provisions of this paragraph, the parties recognize that it may be appropriate for certain Documents to be produced in Native Format. Therefore, the Producing Party shall produce all spreadsheets (e.g., .XLS or .XLSX files) and .PPT presentations in native format unless there is an agreement to the contrary. The Receiving Party may also request that the Producing Party produce additional file types of electronic Documents in Native Format where the converted image format distorts or causes the information to be improperly displayed. Such Documents shall be listed by the Receiving Party or a general agreement may be reached after meeting and conferring. Prior to producing any Protected Information as defined in any applicable Protective Order entered herein in Native Format, the Producing Party and the Receiving Party shall meet and confer to establish additional procedures, to the extent necessary, for the protection of the native information.

1 (6) **Color.** Documents may be produced in black and white in the first  
2 instance. If a produced Document contains color and that color is necessary to decipher the  
3 meaning, context, or content of the document, the Producing Party shall honor reasonable requests  
4 for either the production of the original Document for inspection and copying or production of a  
5 color image of the Document.

6 D. **Production Media.** A Producing Party shall produce Documents on a  
7 CD-ROM, DVD, external hard drive, ftp, or such other readily accessible computer or electronic  
8 media as the Producing Party and the Receiving Party may hereafter agree upon (the “Production  
9 Media”). Information that shall be identified on the face of the Production Media shall include: (1)  
10 the production date, and (2) the confidentiality notation required by the Protective Order entered in  
11 this case, if the media contains Confidential Information, as defined in the Protective Order. Where  
12 practicable, the face of the Production Media shall also contain the Bates Number range(s) of the  
13 Documents on the Production Media. Where not practicable, the range(s) may be provided in an  
14 accompanying letter. If the Producing Party encrypts or “locks” the production, the Producing  
15 Party shall include with the production an explanation of how to decrypt the files.

16 E. **Document Unitization.** When scanning paper documents into Document  
17 Images as described in paragraph 5.C.(1), they shall be unitized in a manner so as to maintain the  
18 document(s) and any attachments as they existed in their original state. For electronic documents,  
19 the relationship of documents in a document collection (e.g., cover letter and enclosures, e-mail  
20 and attachments, binder containing multiple documents, or other documents where a parent-child  
21 relationship exists between the documents) shall be maintained through the scanning or conversion  
22 process from native format to TIFF, provided however, that the Parties shall be required to present  
23 only one level of parent child relationship. Document Images generated from attachments to  
24 e-mails stored in Native Format shall be produced contemporaneously and sequentially  
25 immediately after the parent e-mail. All hard copy documents imaged and produced electronically  
26 shall include a unitization file (“load file”) in accordance with paragraph 5.C.(3).

27 F. **Paper Documents Containing Fixed Notes.** Paper Documents that contain  
28 fixed notes shall be scanned with the notes affixed, if it can be done so in a manner so as not to

1 obstruct other content on the document. If the content of the Document is obscured by the affixed  
2 notes, the Document and note shall be scanned separately.

3           G.     **Duplicates.** If a Producing Party who has more than one identical copy of an  
4 electronic document (i.e., the documents are actual duplicates), the Producing Party need produce  
5 only a single copy of that document. A Producing Party need not produce the same electronically  
6 stored information in more than one form.

7           H.     **Bates Numbering.** Each Producing Party shall Bates number its  
8 production(s) as follows:

9                   (1)     **Document Images.** Each page of a produced Document shall have a  
10 legible, unique page identifier (“Bates Number”) electronically “burned” onto the image at a  
11 location that does not unreasonably obliterate, conceal, or interfere with any information from the  
12 source document. The Bates Number shall contain a two to four letter prefix associated with the  
13 Producing Party’s name followed by 8 numbers (e.g., ABCD00000001). The Producing Party will  
14 use a consistent prefix throughout the matter. Thus, once a party chooses a four letter prefix, e.g.  
15 ABCD, it shall not later produce a Document using a different prefix, e.g. EFGH. No other legend  
16 or stamp will be placed on the Document Image other than a confidentiality legend (where  
17 applicable), redactions, the Bates Number identified above, and any other internal tracking number  
18 that the Producing Party may choose to use. The confidentiality legend shall be “burned” onto each  
19 document’s image at a location that does not unreasonably obliterate or obscure any information  
20 from the source document.

21                   (2)     **Native Format Documents.** In the event Native Format Documents  
22 are produced, in order to preserve the integrity of those Native Format Documents, no Bates  
23 Number, confidentiality legend, or internal tracking number should be added to the internal content  
24 of the Native Document, but may be added to the file name and/or to a document placeholder  
25 provided with the production. Additionally, Native Format Documents may be produced with  
26 password protection.

27           I.     **Metadata.** To the extent it is reasonably accessible, the Producing Party  
28 shall produce the metadata information described below with each production and in the format



described in this Paragraph 5, above. For images generated from native electronic documents, a Producing Party shall produce with each production the following fields, where available. The field naming conventions shall be the following, unless otherwise agreed. Substantially similar field names may be used if consistent with the defined fields. Field names must be consistently applied for each production by a Producing Party. Upon request from the Receiving Party, the Producing Party shall produce additional metadata for select documents. In the event the parties cannot reach agreement regarding a request to produce metadata, it shall be the Receiving Party's burden to show good case for such production.

FIELD	DEFINITION	DOC TYPE
SOURCE	Name of party producing the document/data	ALL
CUSTODIANS	Name of person from whose files the document/data is being produced	ALL
BEGINBATES	Beginning Bates Number (production number)	ALL
ENDBATES	Ending Bates Number (production number)	ALL
FROM	Sender	EMAIL <sup>1</sup>
TO	Recipient	EMAIL
CC	Additional Recipients	EMAIL
BCC	Blind Additional Recipients	EMAIL
SUBJECT	Subject line of Email	EMAIL
BEGATTACH	First Bates number of a family range (i.e. Bates number of the first page of the parent email)	EMAIL
ENDATTACH	Last Bates number of a family range (i.e. Bates number of the last page of the last attachment)	EMAIL
DATESENT	Date sent	EMAIL
TIMESENT	Time sent	EMAIL
HASHVALUE	MD5 Hash for Edocs	EDOCS
DOCTYPE	Document type (e.g. .doc, .pst, .ppt, .xls, .pdf)	EDOCS
NATIVELINK	The path to the native files in the production	EDOCS
AUTHOR	The creator of a documents	EDOCS
TITLE	The title of a document	EDOCS

**J. Privilege Logs.** The Producing Parties will produce privilege logs in an electronic format that allows text searching and organization of data. When there is a chain of

<sup>1</sup> For purposes of providing metadata, "EMAIL" Documents excludes attachments.

1 privileged emails, the Producing Party need only include one entry on the privilege log for the  
 2 entire e-mail chain, and need not log each e-mail contained in the chain separately. The parties  
 3 shall meet and confer regarding the appropriate timing for the production of privilege logs.  
 4 However, the production of a privilege log for a custodian shall be not less than 7 days prior to that  
 5 custodian's deposition. The Producing Party and the Receiving Party may modify the deadlines for  
 6 production of privilege logs by agreement. Parties are not required to include in the privilege logs  
 7 any information or Documents generated or created after the filing of the complaint in this matter.

8 **K. No Backup Restoration Required.** Absent a showing of good cause, no  
 9 party need restore any form of media upon which backup data is maintained in a party's normal or  
 10 allowed processes, including but not limited to backup tapes, disks, SAN, and other forms of  
 11 media, to comply with its discovery obligations in the present case.

12 **L. Categories that Need Not Be Preserved.** Absent a showing of good cause  
 13 by the Requesting Party, the categories of ESI identified in Schedule A need not be preserved.

14 **M. General ESI production requests under Federal Rules of Civil Procedure 34**  
 15 **and 45, or compliance with a mandatory disclosure order of this court, shall not include e-mail or**  
 16 **other forms of electronic correspondence (collectively "e-mail"). To obtain e-mail, parties must**  
 17 **propound specific e-mail production requests.**

18 **N. E-mail production requests shall be phased to occur timely after the parties**  
 19 **have exchanged initial disclosures, a specific listing of all e-mail custodians likely to have**  
 20 **discoverable information, a specific identification of the ten most significant listed e-mail**  
 21 **custodians in view of the pleaded claims and defenses,<sup>2</sup> infringement contentions and**  
 22 **accompanying documents pursuant to Patent L.R. 3-1 and 3-2, invalidity contentions and**  
 23 **accompanying documents pursuant to Patent L.R. 3-3 and 3-4, and preliminary information**  
 24 **relevant to damages. The exchange of this information shall occur at the time required under the**  
 25 **Federal Rules of Civil Procedure, Local Rules, or by order of the Court. The parties may jointly**  
 26 **agree to modify this limit or, failing agreement, by seeking leave of Court.**

27 \_\_\_\_\_  
 28 <sup>2</sup> A "specific identification" requires a short description of why the custodian is believed to be significant.

1           O.     E-mail production requests shall identify the custodian, search terms, and  
 2 time frame. The parties shall cooperate to identify the proper custodians, proper search terms, and  
 3 proper time frame. Each requesting party shall limit its e-mail production requests to a total of  
 4 eight custodians per producing party for all such requests. The parties may jointly agree to modify  
 5 this limit without the Court's leave. The Court shall consider contested requests for additional or  
 6 fewer custodians per producing party upon showing a distinct need based on the size, complexity,  
 7 and issues of this specific case.

8           P.     Each requesting party shall limit its e-mail production requests to a total of  
 9 ten search terms per custodian per party. The parties may jointly agree to modify this limit without  
 10 the Court's leave. The Court shall consider contested requests for additional or fewer search terms  
 11 per custodian, upon showing a distinct need based on the size, complexity, and issues of this  
 12 specific case. The search terms shall be narrowly tailored to particular issues. Indiscriminate terms,  
 13 such as the producing company's name or its product name, are inappropriate unless combined  
 14 with narrowing search criteria that sufficiently reduce the risk of overproduction. A conjunctive  
 15 combination of multiple words or phrases (e.g., "computer" and "system") narrows the search and  
 16 shall count as a single search term. A disjunctive combination of multiple words or phrases (e.g.,  
 17 "computer" or "system") broadens the search, and thus each word or phrase shall count as a  
 18 separate search term unless they are variants of the same word. Use of narrowing search criteria  
 19 (e.g., "and," "but not," "w/x") is encouraged to limit the production and shall be considered when  
 20 determining whether to shift costs for disproportionate discovery.

21           Q.     Pursuant to Federal Rule of Evidence 502(d), the inadvertent production of a  
 22 privileged or work product protected ESI document is not a waiver in the pending case or in any  
 23 other federal or state proceeding. *See also* Section 13 of the Stipulated Protective Order in this  
 24 matter, specifying that "When a Producing Party gives notice to Receiving Parties that certain  
 25 inadvertently produced material is subject to a claim of privilege or other protection, the  
 26 obligations of the Receiving Parties are those set forth in Federal Rule of Civil Procedure  
 27 26(b)(5)(B)".

28           12.     The mere production of ESI in a litigation as part of a mass production shall not

1 itself constitute a waiver for any purpose.

2 13. Except as expressly stated, nothing in this order affects the parties' discovery  
3 obligations under the Federal or Local Rules.

**SCHEDULE A**

1. Deleted, slack, fragmented, or other data only accessible by forensics.
2. Random access memory (RAM), temporary files, or other ephemeral data that are difficult to preserve without disabling the operating system.
3. On-line access data such as temporary internet files, history, cache, cookies, and the like.
4. Data in metadata fields that are frequently updated automatically, such as last-opened dates.
5. Back-up data that are substantially duplicative of data that are more accessible elsewhere.
6. Voice messages.
7. Instant messages that are not ordinarily printed or maintained in a server dedicated to instant messaging.
8. Device-to-device (pin-to-pin) messages sent to or from mobile devices (e.g., Android, iPhone, and Blackberry devices), provided that a copy of such mail is routinely saved elsewhere.
9. Other electronic data stored on a mobile device, such as calendar or contact data or notes, provided that a copy of such information is routinely saved elsewhere.
10. Logs of calls made from mobile devices.
11. Server, system, or network logs.
12. Electronic data temporarily stored by laboratory equipment or attached electronic equipment, provided that such data is not ordinarily preserved as a part of a laboratory report.
13. Data remaining from systems no longer in use that is unintelligible on the systems in use.
14. Company wikis and social network data from services such as Facebook, LinkedIn and Twitter.

1                   **IT IS SO STIPULATED.**

2           DATED: May 6, 2013

/s/ Jeff D. Friedman

Steve W. Berman

(*Pro Hac Vice* Application to be filed)

Mark S. Carlson

(*Pro Hac Vice* Application to be filed)

HAGENS BERMAN SOBOL SHAPIRO LLP

1918 Eighth Avenue, Suite 3300

Seattle, WA 98101

Telephone: (206) 623-7292

Facsimile: (206) 623-0594

steve@hbsslaw.com

markc@hbsslaw.com

Jeff D. Friedman (173886)

HAGENS BERMAN SOBOL SHAPIRO LLP

715 Hearst Avenue, Suite 202

Berkeley, CA 94710

Telephone: (510) 725-3000

Facsimile: (510) 725-3001

jefff@hbsslaw.com

*Attorneys for Plaintiff and Counterclaim  
Defendant THOUGHT, INC.*

16           DATED: May 6, 2013

/s/ Robert J. Artuz

*P*

James G. Gilliland, Jr. (SBN 107988)

jgililand@kilpatricktownsend.com

Mehrnaz Boroumand Smith (SBN 197271)

mboroumand@kilpatricktownsend.com

Steven D. Moore (*pro hac vice*)

smoore@kilpatricktownsend.com

KILPATRICK TOWNSEND &

STOCKTON LLP

Eighth Floor, Two Embarcadero Center

San Francisco, CA 94111

Telephone: (415) 576-0200

Facsimile: (415) 576-0300

*Attorneys for Defendants and  
Counterclaim Plaintiffs*

ORACLE CORPORATION, ORACLE


AMERICA, INC. and ORACLE

INTERNATIONAL CORPORATION

**ORDER**

**PURSUANT TO STIPULATION, IT IS SO ORDERED.**

DATED: May 7, 2013

  
HONORABLE JEFFREY S. WHITE  
United States District Judge

65406240V.1